

ERICSSON/CREATIVE MERGER INQUIRY

Summary of hearing with ITV held on Friday 6 December 2013

Background

1. ITV is an integrated producer broadcaster. It is the largest commercial television network in the UK operating a family of channels including the rebranded ITV. It also delivers content across multiple platforms either directly or via itv.com and ITV Player. ITV Studios is an international production and distribution business which produces and sells programmes and formats in the UK and worldwide.

Playout requirements

2. ITV's playout requirements were complex as it had complex commercial considerations, extensive regionality, and a large number of live events across its portfolio of channels. Its commercial considerations resulted in complexity both due to the inclusion of adverts during programmes and due to the regulatory framework that limits the amount of commercials it can show in each clock hour.
3. The BBC dealt with regionality through switching between Red Bee Media's (RBM's) network feed and the nations and regions variants. Everything other than the network feed was done by the BBC, not RBM. All of its regionality was dealt with by Technicolor. The BBC was less complex as it did not have to deal with commercials. Channel 4 carried commercials, and although Channel 4 had some regional requirements, these were less complex, and there was much less live content on Channel 4 than on ITV.
4. ITV had a need for reactive and responsive editorial judgement with its schedules due to live events. Event television was what made linear broadcasting more attractive than online and catch-up TV. Big live events brought the nation together at a specific point in time.

Complexity

5. Big live events relied on the ability of the playout staff to react and respond to whatever was happening on air. For example, the complexity around advertising, which increased around live events. Each hour could only contain 12 minutes of advertising and during big events this time was fully allocated. If there was an over-run, the end break might move into the next hour and overload it with commercials. Even though ITV had a duty manager that was responsible for making changes to the schedule, depending on the timeframe the network director (Technicolor) might have to step in.
6. ITV updated its forecasts about programme performance daily, and maximized its use of commercial minutage. The peak-time schedule for advertising was sent to Technicolor every day at 5.00pm for commencement at 7.00pm.
7. Any disruption in the schedule was extremely difficult (and potentially costly) to deal with. Accordingly, it would have to build a high degree of trust in an alternative supplier in order to be confident about that supplier's ability to cope with the complexity of ITV's requirements and therefore to consider it worth the risk of disruption caused by moving from one supplier to another.

Staff

8. ITV looked for more than just a technical level of expertise in the playout provider's staff. Some technical ability was required, though it was important that staff understood broadcasting in the UK. This included regulatory understanding, editorial judgement such as a feel for taste and decency and an understanding of the ITV brand.
9. [REDACTED] had the necessary judgement and expertise [REDACTED], and the people with these skills were more important than those who designed the technical solution. ITV understood that there were approximately 27 people, including network directors, transmission controllers, and the TOCs (the supervisory level) at Technicolor with the necessary judgement and expertise.
10. Knowledge of its brand and values, and also an understanding of UK culture necessary for the right editorial judgement could not be developed outside of the UK. It had debated this with Technicolor, and concluded that it wanted its primary playout site to be UK-based. ITV could locate its DR capability outside the UK, though this might still not be acceptable in case of a disaster that lasted for an extended amount of time.
11. ITV's requirements were different from other broadcasters as it broadcasted a lot of live events, had a coordinated extension of key programme brands across multiple channels in its portfolio (which, inter alia, necessitated live handovers from its main channel to its portfolio channels), and had a mixture of programming genres. Its regional programming had to come back to rejoin fixed points in the schedule, such as the News at Ten, whereas a sports channel only broadcasted sport and had a more flexible schedule.
12. Live content in particular increased its risk profile, as this featured heavily in its peak-time programming. It made most of its money in peak time, from 6.00pm to 10.30pm, and as a PSB it had a lower peak-time limit in terms of the amount of permitted advertising. This created enormous pressure to optimize its advertising. However, this pressure also had to be balanced against regulatory constraints, particularly around minutage limits. Given the unpredictable nature of much of ITV's live broadcasting, Technicolor made substantial reactive commercial and regulatory judgements on its behalf and, given the potential implications, it needed to have the best and most experienced people possible.
13. Even though Channel 4 and 5 faced the same regulations on the amount of advertising they could carry, ITV considered that neither of them had comparable scale, volume of live content or similar regionality. However, RBM's experience with Channel 4 would give it an understanding of how the regulatory framework around commercials worked, which it did not deal with in its work for the BBC.
14. Editorial judgement and ITV values were mostly embedded in the network directors. These people typically had more than ten years in the role and in some cases might have worked for ITV previously. There would be some people subject to TUPE transfer if it switched provider but it might not know who would TUPE across until [REDACTED].

In-house, outsourced, and switching providers

15. ITV preferred outsourced playout services if it could find the right partner with appropriate skills, and infrastructure and which understood its values. Playout was a

capital intensive and fast-changing business, therefore an external playout provider would be more able to provide the technical infrastructure.

16. There was already a split between editorial and technical functions, for example where the ITV commercial duty officer checked upcoming commercials, decided on changes, and then passed these to the playout operator who would manually edit the schedule in the automation system. Further splitting the technical side of the playout operations from the editorial was not an easy split to make and might cause more problems over time.
17. Moving its playout operations [REDACTED]. Some people would TUPE to the new provider, [REDACTED].
18. ITV would take around [REDACTED] after moving to the new playout provider before it would be confident the new provider was up to speed. Moving the playout operation would [REDACTED].
19. In a forthcoming tender situation it would not be possible for a new provider without the relevant experience to do what Technicolor did in 2006 when ITV outsourced its entire playout operation. Its current operations were now located in Technicolor's facilities and [REDACTED].
20. ITV considered that switching from one outsourced provider to another [REDACTED]. The original outsourcing took substantially longer than envisaged. Its existing contract [REDACTED].
21. With regards to its playout contract, [REDACTED].
22. When it switched in future, [REDACTED].
23. The transition [REDACTED], though easier for a supplier of some scale. It expected [REDACTED] to have the necessary calibre of people in its current operations, which would make it easier to staff the temporary operations until staff were transferred over under TUPE.
24. Terminating the playout contract with Technicolor after the World Cup 2010 incident would [REDACTED]. Technicolor did not accept the incident constituted a gross breach of contract and [REDACTED]. Switching providers was not something to be done lightly, and it felt that it would be better to spend time on getting the service right.
25. ITV [REDACTED] insource playout operations again, [REDACTED] it noted this was always an option. The advantages of playout operations being outsourced were that the provider was at the cutting edge of technology and had the necessary scope and range in its operations. However, there was a balance and, for example, ITV philosophy and values would be served better by its own people.
26. From an operational point of view, it would rather insource than [REDACTED], as it would have more control and confidence in its own people. Service quality might dip in the interim [REDACTED], which it did not consider acceptable. However, this had to be balanced with the technology and investment requirements.
27. [REDACTED]
28. It was possible to [REDACTED].

Contracts, tenders and negotiation

29. When it held the tender for outsourcing its playout operations, it shortlisted Technicolor and RBM. It recalled that the other potential suppliers were not close contenders for Technicolor and RBM. Technicolor did not have an existing operation up to the level it was looking for; however, its team included people that understood ITV's operations and as a result the quality of Technicolor's response met all the RFP criteria. ITV understood that these people were permanent staff at Technicolor and not hired just for the RFP.
30. RBM was its first choice in terms of the service offering. However, it favoured the Technicolor bid for its commercial creativity and in particular the ability to overcome concerns ITV had regarding Technicolor's operational knowledge and understanding. Technicolor's proposition included purchasing the existing site and migrating the entire operation once the new site had been built and tested. ITV also had concerns about RBM supplying both BBC and ITV, in particular regarding the confidentiality of the scheduling information. However, RBM had offered adequate reassurances on keeping the two operations separate.
31. Based on a high level benchmarking exercise by [REDACTED], if it were to tender today with [REDACTED], it would be able to get £[REDACTED] million off its annual costs for playout, which were currently at about £[REDACTED] million. This benchmarking exercise was primarily about the impact of regionality rather than playout, and it did not place significant weight on this study. However, ITV was currently seeking to use some elements of the [REDACTED] work [REDACTED].
32. If, in a tender situation, there would be a [REDACTED] between Technicolor and RBM, it would switch to RBM provided [REDACTED]. ITV's financial situation was improved since 2006, and its primary concern was [REDACTED].
33. ITV was planning a technology refresh as some infrastructure of Technicolor was reaching the end of its lifespan. It also wanted to integrate elements that had been added on to the old infrastructure over time, such as HD and time-shifted channels. [REDACTED].
34. [REDACTED]
35. [REDACTED]
36. ITV had some visibility of the costs for the changes it was negotiating, though not as much as it would have liked. It had contractual rights [REDACTED]. Negotiations over the past nine months had resulted in more transparency of costs and visibility of staff numbers.
37. If it were to tender, it would probably start two and a half years ahead of contract expiry. It wanted around 12 months to choose a supplier and would then allow that supplier at least another 12 months to prepare. It would need to decide on a new supplier by [REDACTED].
38. ITV's playout tender procedure would include an RFP and use a set of necessary criteria of a playout provider to get to a shortlist. ITV would like [REDACTED] parties on the shortlist ideally and it would assess their technical and operational capability, and financial stability. It would then arrive at preferred provider status.
39. At the RFP stage, it would expect a basic understanding of the UK broadcast environment, and [REDACTED] should be able to pass that test. In the second round, it would

focus on their existing operations, for example with a site visit, and how they anticipated preparing to meet ITV's requirements. [REDACTED] not a front runner until it went through the process and demonstrated what it could do, and was [REDACTED].

40. ITV would only negotiate the fine detail with the preferred supplier, as it considered it extremely difficult to do this with two and was aware the process also required a lot of time, effort and money from the providers. It would tell the other providers it had gone into a period of exclusivity. ITV was therefore important to be reasonably confident with the preferred provider before granting any such exclusivity.
41. In its next tender it would be inclined towards an open-book style contract. Playout contracts tended to be long term and things changed quickly in that time. If it knew what costs it was driving, it would only be paying for that cost. Where technology changes occurred, ITV would have the opportunity to benefit.
42. [REDACTED]. However, if it was negotiating in early [REDACTED] and the contract was still due to expire in [REDACTED], it would encourage [REDACTED], and possibly [REDACTED] to compete for it.
43. The current [REDACTED] year contract length was driven by the requirement for a new site to be built when outsourcing in 2006. If it moved to a new provider with existing infrastructure it could seek a shorter term. In any case it would look for a break clause in 2024 when its licences expire.
44. Lower-cost types of technology from the cloud were still a couple of years away, and even then it could not see itself adopting that technology for the foreseeable future.
45. [REDACTED].
46. In 2012, it undertook a market test after contracting with Globecast to provide playout for its ITV Choice Asian Channel. ITV wanted to give [REDACTED].

Technology

47. Most playout providers used similar generic hardware components, such as the technology for video servers. The base software used for playout was also generic and fairly consistent across playout providers. The software was typically then significantly tailored towards a customer's playout environment and specific requirements.
48. Even though the various bits of equipment were generic across broadcasters, it thought that perhaps the architecture and design was something more experienced providers were more comfortable with. Only Technicolor and RBM had experience of putting together an infrastructure for regional playout. However, there were different ways to do this and the BBC's infrastructure was different from ITV's.

The playout market

49. ITV would go to the market at roughly the same time as the BBC, and it considered this might overstretch the suppliers. [REDACTED].
50. If the BBC moved away from RBM, it could have severe consequences for RBM. RBM would be a less credible supplier and the new BBC incumbent would inherit some of this credibility. If it moved away from Technicolor, this would affect Technicolor's credibility. [REDACTED].

51. Encompass had a good small operation which could handle less reactive channels, was an ambitious company and was looking to improve its offer. ITV went to Encompass's premises recently [REDACTED].
52. Arqiva was strong technically, [REDACTED].
53. Prior to the proposed acquisition by Ericsson, Technicolor's business plan had failed and it was in some distress. Being acquired by a powerful organization with a strong position in telecoms and technical scale was positive.
54. There might be radical movements in the market over the coming years, though it did not think this would change [REDACTED]. It was unclear, both to ITV and Technicolor, what technology will look like in four years' time. ITV had investigated simpler solutions such as channel in a box and the cloud player, but these were not currently feasible.

Views on the merger

55. In general, it was in favour of the merger as it thought it would bring potential scale benefits.
56. However, it could lead to difficulties with [REDACTED], and therefore there would need to be some form of price controls (and related constraints) through behavioural undertakings. Even though it might create the same situation if it switched from Technicolor to RBM for its next contract, it could and would still do that, [REDACTED].